

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

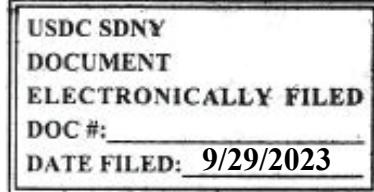
ULKU ROWE,

Plaintiff,

-v.-

GOOGLE LLC,

Defendant.



19 Civ. 08655 (JHR)

ORDER

JENNIFER H. REARDEN, District Judge:

WHEREAS, on September 18, 2023, the parties filed a Second Amended Joint Pretrial Order, identifying, *inter alia*, the witnesses whom they respectively anticipate calling at trial, ECF No. 310 (“SAJPTO”);

WHEREAS, Plaintiff anticipates calling Thomas Kurian as a witness regarding “[h]is knowledge of the lawsuit as indicated in Exhibit P83,” SAJPTO at 5;

WHEREAS, Exhibit P83 consists of internal Google emails dated September 18 and 19, 2019, the content of which, Plaintiff argues, “demonstrates corporate knowledge at the highest level . . . as to Ms. Rowe’s [September 17, 2019] complaint,” Sept. 21, 2023 Tr. 29:6-9, 11-12;

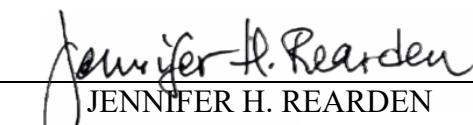
WHEREAS, Defendant objects to the identification of Mr. Kurian as a witness, and seeks to exclude his testimony under Federal Rules of Evidence 401 and 403, SAJPTO at 6;

It is hereby ORDERED that Defendant’s application is denied. Plaintiff’s case is premised in part on claims that Defendant retaliated against her for filing the instant action. *See, e.g.*, ECF No. 108 ¶¶ 48-61. To prove retaliation, Plaintiff must establish, *inter alia*, that Defendant “was aware” that she engaged in a protected activity. *McHenry v. Fox News Network, LLC*, 510 F. Supp. 3d 51, 67 (S.D.N.Y. 2020). Accordingly, testimony regarding Defendant’s knowledge of the filing of this lawsuit is relevant. *See* Fed. R. Evid. 401. Absent a stipulation establishing that knowledge as of September 2019, Mr. Kurian’s testimony will be permitted.

Any examination of Mr. Kurian shall be limited. Specifically, he may only be questioned regarding “his knowledge of the lawsuit as indicated in Exhibit P83.” SAJPTO at 5. Within those parameters, the probative value of Mr. Kurian’s testimony is not “substantially outweighed by a danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence.” Fed. R. Evid. 403.

SO ORDERED.

Dated: September 29, 2023  
New York, New York

  
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JENNIFER H. REARDEN  
United States District Judge